S.B. Cr. Misc. Petition NO.638/2007

Mohd. Fanus
Vs.
State of Rajasthan

Date of Order :: 12-07-2007

HON'BLE MR. JUSTICE H.R.PANWAR

Shri Shambhoo Singh, for the petitioner.
Shri Ashok Upadhyay, Public Prosecutor.

Issue notice. Shri Ashok Upadhyay accepts notice for the State. With the consent of the parties, the petition is heard and decided at the admission stage.

By the instant cr. Misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 19.3.2007 passed by the learned Additional Sessions Judge, Rajgarh (for short, ‘the revisional court’) whereby the revision petition filed by the petitioner against the order dated 31.8.2006 passed by Additional Chief Judicial Magistrate, Rajgarh (for short, 'the trial court') in FR no.55/2005 arising out of FIR No.73/05, P.S. Rajgarh for the offence under Section 420IPC was dismissed.

It is contended by the learned counsel for the petitioner that both the courts fell in error, accepting negative final report filed by the police

and dismissed the protest petition filed by the petitioner. It is further contended that trial court fell in error in not considering the statement recorded under Sections 200 and 202 Cr.P.C.

I have carefully gone through the order passed by the trial court dated 31.8.2006 as also the order of the revisional court dated 19.3.2007.

From perusal of both the orders impugned, it nowhere appears that the trial court as well as the revisional court has considered the statement of the witnesses recorded under Section 200 and 202 Cr.P.C. It appears that petitioner himself appeared as PW-1 and made statement under Section 200 Cr.P.C. and produced witnesses Aladin, Hasan Ali, Hameed, Manjoor Ali and the trial court recorded the statement of these witnesses under Section 202 Cr.P.C.

From perusal of both the orders, it nowhere appears that the material evidence has been considered by both the courts below before arriving at the conclusion in accepting negative final report. In this view of the matter, the orders passed by the courts below are not sustainable and deserve to be set aside and matter deserves to be remanded to the trial court to pass a fresh order.

Consequently, the criminal misc. petition is allowed. The order passed by the trial court dated 31.8.2006, as also the order passed by the revisional court dated 19.3.2007 are set aside. The matter is remanded to the trial court to pass a fresh order in accordance with law.

[H.R.PANWAR],J.

Praveen